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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

Temporary Waiver of Notarization Requirement for Spousal Consent

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: With this final rule, the Federal Retirement Thrift Investment Board ("FRTIB") is withdrawing its temporary waiver of the requirement to notarize a spouse's signature on withdrawal election forms.

DATES: This rule is effective October 1, 2020.

FOR FURTHER INFORMATION CONTACT: *For press inquiries, contact Kim Weaver at (202) 942-1641. For further information, contact Laurissa Stokes at (202) 942-1645.*

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed

services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

A spouse of a FERS or uniformed services TSP participant has an automatic legal entitlement to a survivor annuity. Annuities are purchased with the balance of the participant's TSP account, and such purchases are made pursuant a withdrawal election. Consequently, the default TSP withdrawal election is a joint life annuity with the 50% survivor benefit. The participant cannot make any other type of withdrawal unless the participant's spouse signs a written statement waiving his or her entitlement to a survivor annuity. This signed, written waiver ("spousal consent") is a statutory requirement. 5 U.S.C. 8435(b) and (c).

The protection of spousal rights is of the utmost importance to the FRTIB. Indeed, although not statutorily required to do so, the FRTIB generally requires spousal consent to be notarized.¹ However, on April 17, 2020, the

¹ The FRTIB Executive Director has the authority to issue regulations to administer the TSP. 5 U.S.C. 8474(b)(5). In 2003, the Executive Director published a regulation requiring spousal consent to be notarized. 68 FR 74450 (December 23, 2003).

FRTIB issued an interim rule temporarily waiving this requirement for withdrawal election forms (85 FR 21311). The temporary suspension of the notarization requirement for spousal consent was necessitated by the coronavirus pandemic, which disrupted day-to-day life in an unprecedented way and made it difficult and unsafe to have forms notarized in person. The uncertainty caused by the evolution of state laws permitting remote notarization coupled with the TSP's lack of a technological workflow to allow participants to submit remotely notarized forms electronically created an extraordinary hurdle for married TSP participants who needed to request a withdrawal during this difficult time.

As of September 1, 2020, 48 states plus the District of Columbia have either adopted laws that enable notaries to perform remote notarizations or temporarily waived certain provisions of law that would otherwise impede the availability of remote notarization. TSP participants have now had time to familiarize themselves with applicable legal requirements and the technology used for remote notarization. In addition, participants are now able to submit remotely notarized forms electronically to the TSP. Moreover, states have increasingly lifted business and school closures, stay-at-home/shelter-in-place orders, and

other coronavirus pandemic-related restrictions, allowing TSP participants to access services such as in-person notaries (mobile or otherwise) that were not available to them in April when the FRTIB temporarily waived the notarization requirement for spousal consent. Therefore, the Executive Director has determined that this temporary waiver is no longer necessary. A married TSP participant who completes a withdrawal election form on or after October 1, 2020, must have his or her spouse's signature notarized.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501-1571, the effects of this regulation on state, local, and tribal governments and the

private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the Federal Register. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

Ravindra Deo,
Executive Director,
Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the FRTIB amends 5 CFR part 1650 as follows:

**PART 1650 - METHODS OF WITHDRAWING FUNDS FROM THE THRIFT
SAVINGS PLAN**

1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C.8351, 8432d, 8433, 8434, 8435, 8474(b)5 and 8474(c)(1).

2. Amend § 1650.61 by revising paragraph (c)(4) to read as follows:

§ 1650.61 Spousal rights applicable to post-employment withdrawals.

* * * * *

(c) * * *

(4) Unless the TSP granted the participant an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP, to show that the spouse has consented to a different total or partial withdrawal election or installment payment change and waived the right to this annuity with respect to the applicable amount, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. If the TSP granted the participant an exception to the signature requirement, the

participant should enclose a copy of the TSP's approval letter with the withdrawal form.

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3. Amend § 1650.62 by revising paragraph (c) to read as follows:

§ 1650.62 Spousal rights applicable to in-service withdrawals.

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(c) Unless the participant was granted an exception under this subpart to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP, before obtaining an in-service withdrawal, a participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse and waiver of the spouse's right to a joint and survivor annuity described in § 1650.61(c) with respect to the applicable amount. To show the spouse's consent and waiver, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent and waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

[FR Doc. 2020-20789 Filed: 9/17/2020 4:15 pm; Publication Date: 9/21/2020]